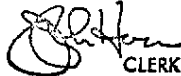


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CLERKUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISIONJAMES G. ABOUREZK; JANE FONDA;
ROXANNE DUNBAR-ORTIZ,

Plaintiffs,

vs.

PROBUSH.COM, INC., a Pennsylvania
Corporation; MICHAEL MARINO; and
BEN MARINO,

Defendants.

Civ. No. 03-4146

**STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF DEFENDANTS'
JOINT MOTION FOR SUMMARY
JUDGMENT**

Come now the above-named Defendant and hereby submits the following statement of undisputed material facts in support of their joint motion for summary judgment.

Senator James G. Abourezk

1. James G. Abourezk is "an honorably discharged veteran of the United States Navy, a former United States Congressman, and a former [United States] Senator for the State of South Dakota. Plaintiff's Complaint, ¶10. Abourezk Dep. (1/18/2005) Exhibit 1.
2. Senator Abourezk is an activist on a lot of issues. Abourezk Dep. At 19.
3. Senator Abourezk is not afraid to publicly express his opinions when he believes that it is important. Abourezk Dep. at 19.
4. Senator Abourezk was part of the Not In Our Name organization and signed their petition seeking to prevent an invasion in Iraq. Abourezk Dep. at 24; 40-41 Abourezk Dep. Exhibit 7.
5. Senator Abourezk hoped the Not In Our Name petition would garner worldwide publicity, which it did. Abourezk Dep. at 25.

6. Senator Abourezk knew the petition was going to be published in the New York Times, USA Today and Los Angeles Times. Abourezk Dep. at 25.
7. Senator Abourezk spent a number of years in politics and always understood that he would likely receive some public criticism for his positions. Abourezk Dep. at 25.
8. Senator Abourezk believes that the invasion of Iraq was a big mistake. Abourezk Dep. at 28.
9. Senator Abourezk has made several public speeches opposing the invasion of Iraq and organized a group of former U.S. Senators who issued press releases and granted media interviews opposing the Bush Administration's plans to invade Iraq. Abourezk Dep. at 29; Exhibit 8.
10. Senator Abourezk intended the organization to mobilize public opposition to the invasion of Iraq. Abourezk Dep. at 29.
11. Senator Abourezk intended to act publicly in any way possible to prevent the invasion of Iraq. Abourezk Dep. (1/18/2005) 30.
12. To prevent a U.S. invasion of Iraq, Senator Abourezk traveled to Iraq with other public officials and journalists, met with officials from the Iraqi government, and asked the Iraqi government to "Please remove the excuses for Bush invading Iraq, because he wants to invade. Please remove the excuses by allowing the weapons inspectors to come into Iraq." Abourezk Dep. at 30.
13. Senator Abourezk knows many of the leaders in the Middle East. Abourezk Dep. (1/18/2005) 34-35.
14. Senator Abourezk wrote authored and published several articles expressing opposition to invading Iraq. Abourezk Dep. at 40.

15. Senator Abourezk's statements regarding his opposition to the invasion of Iraq and Middle Eastern policy were heard and reported in the Middle East and throughout the world. Abourezk Dep. at 41-42; Abourezk Dep. Exhibit 16.
16. Senator Abourezk is a public advocate for certain policy positions with regard to the Middle East. Abourezk Dep. at 42.
17. Senator Abourezk considers himself well known in parts of the Middle East. Abourezk Dep. at 42.
18. Senator Abourezk has authored two published books entitled "Advise and Dissent" and "Through Different Eyes." Abourezk Dep. at 43-44; Abourezk Dep. Exhibit 26.
19. Senator Abourezk has written other published commentary including the "Progressive Media Project," "Questioning President's Policies Is Not Unpatriotic," "We can beat Iraq, but what for?" and his speech "Biblically, Judas Iscariot was the man who betrayed"—printed in Imperial Washington, a reproduction book by Senator Pettigrew in the 1920's. Abourezk Dep. at 44-45; Abourezk Dep. Exhibit 21; Abourezk Dep. Exhibit 9; Abourezk Dep. Exhibit 10; Abourezk Dep. Exhibit 11; Abourezk Dep. Exhibit 20.
20. Senator Abourezk is a member of Public Campaign's National Advisory Board. Abourezk Dep. at 46-47.

Ms. Roxanne Dunbar-Ortiz

21. Ms. Dunbar-Ortiz is an author, historian and professor in the Department of Ethnic Studies at California State University. Abourezk Dep. at Exhibit 1.
22. Ms. Dunbar Ortiz is the author of "In Red Dirt, Growing up in Okie," and "Outlaw Woman: A Memoir of the War Years 1960-1975," which illustrate her lifelong public

- activism on many issues of national concern. Exhibit 27.
23. Ms. Dunbar Ortiz has also authored and published "Roots of Resistance: Land: Tenure in Mexico," and "The Great Sioux Nation and Indians of the Americas." Exhibit 27.
24. Ms. Dunbar-Ortiz is a founding member of the early women's liberation movement in the United States. Exhibit 28; Exhibit 29.
25. Ms. Dunbar Ortiz in her book "Outlaw Woman: A Memoir of the War Years 1960-1975" states on her dedication page "in honor of all those, past and present, committed to creating a just and peaceful world and for the war resisters and deserters, and our political prisoners who continue to pay the price for our struggles." Exhibit 29.
26. Ms. Dunbar-Ortiz helped produce the seminal journal series, "No More Fun and Games." Exhibit 28; Exhibit 29 (back cover).
27. Ms. Dunbar-Ortiz was a dedicated anti-war activist and organizer through the 1960's and 1970's, and against the invasion of Iraq in 2003. Exhibit 28; Exhibit 29 (back cover); Exhibit 7.
28. She has been a public speaker on issues of patriarchy, capitalism, imperialism, and racism. Exhibit 28; Exhibit 29 (back cover).
29. She has worked in Cuba with the Venceremos Brigade and formed associations with other revolutionaries across the spectrum of radical and underground politics, including the SDS, the Weather Underground, the Revolutionary Union, and the African National Congress. Exhibit 28; Exhibit 29 (back cover).
30. Ms. Dunbar-Ortiz has authored several articles including "Declaration of War on

Male Supremacy, Female Liberation Must be the Basis for Social Revolution or There Will Be No Social Revolution!,” “The Imperialist Origins of the US,” and “One or Two Things I Know About Us: Rethinking the Image and Role of the Oakies.” Exhibit 33; Exhibit 34; Exhibit 35.

31. Ms. Dunbar-Ortiz in a public lecture titled, “The Grid of History: Cowboys and Indians,” noted that “we [Americans] have yet to have a real anti-imperialist revolution in the United States.” Exhibit 30.
32. During her speech, “The Grid of History: Cowboys and Indians,” Ms. Dunbar-Ortiz made it clear the only way to end U.S. imperialism is to end the U.S. empire, noting that this ending means dismantling imperialism, not devolution, and creating something different instead and the U.S. and its people must be involved in this process, declaring in this context that “there cannot be too much anti-Americanism for me; I welcome it.” Exhibit 30; Exhibit 31.
33. Ms. Dunbar-Ortiz has spoken on global international human rights at the Sacramento Marxist School. Exhibit 32.
34. Ms. Dunbar-Ortiz signed the famous Not In Our Name petition opposing the invasion of Iraq. Exhibit 7.

Ms. Jane Fonda

35. Ms. Fonda is a renowned film actress and civic activist. Abourezk Dep. (1/18/2005) Exhibit 1.
36. Ms. Fonda is a member of one of the most celebrated families in American cinema, beginning her film career in the early 1960’s. Exhibit 41.
37. Ms. Fonda has appeared in more than 40 films. Exhibit 37.

38. Ms. Fonda starred in and produced "Jane Fonda's Complete Workout" which sold nearly 17 million copies. Exhibit 37; Exhibit 40.
39. Ms. Fonda stated "If you commit yourself to being in the public eye with all the perks, the least you take the ups and downs." Exhibit 38.
40. Ms. Fonda has been on numerous magazine covers going back several decades, including the cover of Life magazine in March 1968. Exhibit 39.
41. Ms. Fonda became involved in political activism during the time of the Vietnam War, Civil Rights Reforms and significant rebellion against the "Establishment." Exhibit 39.
42. In April 1970, Ms. Fonda along with Fred Gardner and Donald Sutherland formed "Free The Army," an antiwar road show. Exhibit 39.
43. In 1970, Ms. Fonda spoke out against the war at a rally organized by Vietnam Veterans Against the War, in Valley Forge, Pennsylvania. Exhibit 39.
44. Beginning in November 3, 1970, Ms. Fonda toured college campuses and raised funds for the organization, Vietnam Veterans Against the War. Exhibit 39.
45. Ms. Fonda funded and organized the Indochina Peace Campaign which continued to mobilize antiwar activists across the nation after the 1973 Paris Peace Agreement when most other antiwar organizations closed down. Exhibit 39.
46. Ms. Fonda founded Adolescent Pregnancy Prevention for teenage girls and is currently heading the Georgia campaign. Exhibit 37.
47. Ms. Fonda participates in peace activism. Exhibit 39.
48. Ms. Fonda signed the famous Not In Our Name Petition opposing the invasion of Iraq. Exhibit 7.

49. Ms. Fonda was honored by Barbara Walters in 1999 as one of the "100 great women of the century." Exhibit 41.
50. Ms. Fonda has recently authored a book titled "My Life So Far," which is an autobiography of her celebrated life. Exhibit 36; Exhibit 37.
51. In April 2005, Ms. Fonda appeared on 60 Minutes in an interview with correspondent Lesley Stahl. Exhibit 40.
52. Ms. Fonda newest movie release, "Monster In Law" debuted in early May of 2005. Exhibit 38; Exhibit 39.

ProBush.com

53. ProBush.com, Inc. is a Pennsylvania corporation with its principal place of business in West Point, Pennsylvania. Plaintiff's Complaint ¶ 2.
54. ProBush.com, Inc. publishes an internet website under the domain name ProBush.com. Plaintiff's Complaint ¶ 6.
55. ProBush.com website expresses and encourages support for President George W. Bush. Affidavit of Michael Marino, Exhibit A.
56. The ProBush.com website was created to counter the anti-Bush websites on the web. Michael Marino Dep. (1/19/2005) 20.
57. The ProBush.com website contains a photograph of the President emblazoned with the headings "President of the United States" and "George Walker Bush." Affidavit of Michael Marino, Exhibit A.
58. There are several links on the website. Affidavit of Michael Marino, Exhibit A.
59. The "Our Hero" caption links to a page that displays free Iraqi citizens expressing gratitude to the United States and President Bush for the liberation of Iraq. Affidavit

of Michael Marino, Exhibit A.

60. The "Hail to the Chief" caption links to a page that displays a photograph of President Bush with an American flag in the background. Affidavit of Michael Marino, Exhibit A.
61. The "Support Our Troops" caption links to a page that itself links to websites for various military support and relief organizations, such as the USO and the American Red Cross, and encourages visitors to participate in or provide financial support for those organizations. Affidavit of Michael Marino, Exhibit A.
62. The website also provides links to various other web pages, news stories, satire, and opinion pieces that are generally supportive of President Bush, his Administration, and the United States Military. Affidavit of Michael Marino, Exhibit A.
63. The website also advertises "ProBush.com" apparel, posters, and other items. Affidavit of Michael Marino, Exhibit A.
64. At the top of the home page, above the photograph of President Bush, is a list of links to various other pages included on the website, two of which are labeled "Patriot List" and "Traitor List." Affidavit of Michael Marino, Exhibit A.
65. The "Traitor List" also begins with what appears to be a dictionary definition of the word "treason," stating: "Treason: Violation of allegiance toward one's country or sovereign, especially the betrayal of one's country by waging war against it or by consciously and purposely acting to aid its enemies." Affidavit of Michael Marino, ¶11; Exhibit 6.
66. It then provides the website's definition of a "Traitor" for purposes of its "Traitor List," stating: "Traitor: If you do not support our President's decisions you are a

traitor.” Affidavit of Michael Marino, ¶11.

67. The website also states: “*Parody. Not to be taken seriously. These ‘traitors’ are not legal ‘traitors’ of the United States,” and previously the phrase “although we wish they were” also appeared at the end of this disclaimer. Affidavit of Michael Marino, ¶11.

68. The Traitor List published by ProBush.com, Inc. was created from names appearing on the famous Not In Our Name Petition list. Michael Marino Dep. (1/19/2005) 16.

69. There are well over one hundred names on the “Traitor List.” Exhibit 6.

70. Senator Abourezk, Ms. Dunbar-Ortiz, and Ms. Fonda are all on the “Traitor List,” because they have signed the Not in Our Name petition. Exhibit 6.

Dated this 1st day of July, 2005.

JOHNSON, HEIDPRIEM, MINER,
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Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT via first class mail, upon the following:

Todd D. Epp
ABOUREZK & EPP LAW OFFICES, P.C.
P.O. Box 1164
Sioux Falls, SD 57101-1164

on this 1st day of July, 2005.



Ronald A. Parsons, Jr.